

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Office of the Attorney General**



Statement of Vikram Swaruup  
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Before the

Committee on Government Operations and Facilities  
Councilmember, Robert C. White, Jr., Chairperson

And

Committee on the Judiciary and Public Safety  
Councilmember Charles Allen, Chairperson

Public Hearing  
B24-446 - Attorney General Civil Rights Enforcement Clarification Amendment Act of 2021  
September 22, 2022

## **Introduction**

Good morning, Chairman Allen, Chairman White, Councilmembers, and staff. My name is Vikram Swaruup, and I have the privilege of serving as the Chief Deputy Attorney General at the Office of the Attorney General for the District of Columbia. I started my tenure in the Office by helping establish our Civil Rights Section, which in the last three and a half years has done some incredible work that I look forward to testifying about today. I am pleased to be joined by OAG's Policy Director Kate Vlach in person and by our Civil Rights Section Chief, Alicia Lendon, virtually.

I am before you to support of B24-446, the Attorney General Civil Rights Enforcement Clarification Amendment Act of 2021. This legislation will help ensure the Office of the Attorney General (OAG) can effectively pursue its mission of protecting the public interest and ending discrimination in the District by codifying in the Human Rights Act (HRA) the investigative tactics and legal strategies our office uses to fight for civil rights.

### **OAG's Success in Enforcing the HRA**

In 1977, the Council enacted the HRA "to secure an end in the District of Columbia to discrimination for any reason other than that of individual merit," D.C. Code § 2-1401.01, and to ensure "equal opportunity," § 2-1402.01, for all residents. Recognizing the benefit of additional affirmative investigations and complex civil rights litigation to fully realize the promise of the HRA, the Council funded a new Civil Rights Section within OAG in 2019 as a complement to the District's other civil rights work. That Section has, in the years since, grown to nine strong. The lawyers and other professionals on this team have secured many important wins for District residents, particularly in fair housing.

For example, we have litigated and won cases against large housing providers and realtors who discriminate against low-income housing voucher holders. In fact, we achieved the District's largest housing discrimination settlement to date—\$900,000 in penalties—in a case against Curtis Investment Group for discriminatory housing advertisements. In 2020, we filed nine housing discrimination cases against 16 real estate companies and professionals, all for posting ads that discriminated against housing voucher holders. Through those cases, we secured almost half a million dollars in penalties and fees for the District. More importantly, these defendants must now comply with the law, maintain anti-discrimination policies, provide fair housing training to all employees, and report future discrimination complaints to OAG. We have also worked collaboratively with technology platforms, like Zillow and Apartments.com to reduce discriminatory advertising on those websites. By publicizing these cases and other efforts, we have sent a strong message to the District's housing providers that discrimination will not be tolerated. This is translating to real behavior change. Since we began our fair housing work, a local advocacy organization reported seeing a steep decline in discriminatory ads for District properties.

Earlier this week, OAG announced a settlement with a local developer and its owner for violating the HRA's prohibition against "blockbusting." Blockbusting is a practice whereby real estate speculators attempt to lower the value of desired properties by stoking prejudice by representing that minority groups are moving into a neighborhood. Blockbusting is an old-school, civil-rights-era form of discrimination that is rarely seen today, so this was a unique case. Polygon Holdings

owned one half of a duplex and wanted to acquire the other half to convert the entire property into condominiums. When the adjacent homeowner declined initial offers from the developer who wanted to purchase the property, a sign was erected on the property that stated, “SECTION 8 & STUDENT ACCOMODATION [sic] COMING SOON” in an attempt to reduce the desirability and value of the property that the developer wanted to purchase. While the homeowner later, with representation, sold the property to Polygon at fair market value, her private resolution of the real estate transaction did not and *could not* remedy the harm that blockbusting tactics have to the District at large: casting protected groups as undesirable neighbors. With the temporary authority that OAG now seeks to make permanent, OAG was able to obtain \$300,000 in penalties and costs and injunctive relief against this developer—relief which no other party was positioned to obtain. This is just one example of how even a single instance of discrimination—one sign—may merit OAG investigation and involvement, and the great relief the Civil Rights Section can obtain to protect the District from discrimination.

OAG has also helped ensure residents with disabilities receive the housing accommodations they need. Earlier this year, we filed a civil rights lawsuit against the D.C. Housing Authority (DCHA) after our investigation identified a years-long pattern of delaying implementation of disability accommodations for so long that some tenants died while waiting for an accessible apartment. This was after residents and advocates complained to us about years of frustration in trying to get these basic accommodations despite their best efforts to work with DCHA. OAG also recently won a motion against a property management company and building owner that refused, for years, to provide a designated parking space to a tenant with mobility limitations. We ultimately obtained a settlement securing the needed accommodation and more than a quarter of a million dollars, including payment to the tenant for her suffering.

We are also currently investigating more than a dozen targets for potential civil rights violations using our temporary pre-suit investigative powers. These investigations are ongoing, and the legislation proposed today would ensure that we are able to continue protecting the public interest by completing these investigations and filing suit if necessary.

### **Legislative Provisions to Continue this Work**

While I could describe many more of our civil rights efforts, let me turn to what the bill before you does. First, the bill expressly codifies OAG’s authority to enforce the HRA through civil litigation. Second, it makes permanent investigative and enforcement tools that were temporarily granted during the pandemic, which are vital to rooting out discrimination and to almost all of the efforts I have just described. Third, the bill also makes a handful of minor technical updates and strengthens the law based on lessons we have learned from enforcing it over the last three years.

#### **(1) Codifying OAG’s Civil Rights Enforcement Authority**

First, this legislation would add a section to the HRA clarifying that OAG can investigate and bring suit for violations of that law. Because the HRA does not yet include this explicit authority, OAG has been enforcing the HRA through a combination of our common law authority and the temporary civil rights legislation enacted by the Council at the beginning of the pandemic. OAG’s common law powers to enforce District statutes were recognized by the District of Columbia Court

of Appeals in 2017. However, without this express provision, we must often spend significant time and resources in fighting efforts by defendants to challenge our authority. This is time and money better spent on combatting discrimination.

Express statutory authority—together with investigative tools and a provision for the recovery of civil penalties—will provide clarity and allow OAG to more efficiently use our resources to protect District residents. The bill would also place our civil rights work on equal footing with our consumer protection, workers’ rights, tenant protection, and other affirmative work—with clear authority and dedicated resources.

## **(2) Maintaining a Full Investigative and Enforcement Toolbox**

Second, this legislation permanently authorizes investigative and enforcement provisions necessary to effectuate the HRA’s anti-discrimination aims. OAG relies on investigative tools and our ability to recover civil penalties to build strong cases and reach meaningful resolutions in public interest matters. The many housing discrimination cases we have successfully resolved—as well as OAG’s long track record of enforcing other statutes that provide these same powers—demonstrates that pre-suit investigative tools and clear penalty structures are practicable, effective, and critical to our work.

The most powerful tool at issue here is our ability to issue and enforce pre-suit subpoenas. Without pre-suit subpoenas, OAG must first file a lawsuit and then seek documents and information through the regular discovery process. But when we can issue pre-suit subpoenas, we are able to conduct faster, more efficient investigations and pursue pre-suit settlements, such as the one against Polygon Holdings. These settlements swiftly end unlawful discrimination and avoid lengthy litigation, preserving District resources. Additionally, when investigations result in a determination that the target did *not* violate the HRA, pre-suit investigations allow us to close the case without subjecting District businesses to litigation.

Also critical to OAG’s work is our ability to seek penalties against those who violate the District’s anti-discrimination laws. The penalties provision in this bill mirrors the penalty structure that the Council put in place for Office of Human Rights (OHR) matters, which was incorporated in OAG’s current temporary authority. Penalties like these provide significant deterrent effect and allow the District to bring in resources to continue this important work.

## **(3) Protecting Residents Who Choose the Administrative Complaint Process**

Third, in the legislation as introduced, we proposed striking a provision of the HRA related to the administrative complaint process before OHR, which is the primary agency tasked with protecting District residents from discrimination. Upon further consideration, we currently recommend removing that provision from the legislation.

OHR plays a critical role in civil rights enforcement by providing residents with accessible and decisive relief when they have experienced unlawful discrimination. OHR’s administrative process allows complainants to avoid the time and cost of litigating in the Superior Court, while still achieving relief when their rights have been violated. OAG’s role, on the other hand, is slightly different. We are tasked with enforcing the HRA to protect the District’s interests, not necessarily

the interests of an individual complainant. Both of these roles are critically important, and we see the efforts of our two agencies as complementary to one another. Indeed, the bill has a provision that contemplates a Memorandum of Understanding between our two agencies to ensure that we are working collaboratively and supporting each other's efforts.

Given the different roles of the two agencies, OAG has concerns with a procedural provision in the HRA that blurs these distinct roles and can interfere with complainants' ability to obtain relief. Currently, the HRA allows either party in a housing discrimination case to remove the case to Superior Court after OHR issues a probable cause finding. When this happens, OAG becomes the plaintiff, instead of the person who experienced discrimination, which creates real problems for both the complainant and OAG. This process is often detrimental to the complainant's case; it is most often triggered by defendants and has the effect of restarting the case and slowing down resolution. This provision also creates serious issues where the District's interest—which OAG is ethically obligated to represent—diverge from the complainant's.

In the year since OAG introduced this legislation, however, we have heard from stakeholders and understand that OHR and some advocates have concerns with striking this provision. We appreciate these concerns but still believe reform is necessary and that there are solutions that will satisfy all parties. We will coordinate with the Council, OHR, and advocates to find a workable solution. In the meantime, however, we recommend removing the part of the bill that strikes this provision in order to focus on the important priority of permanently codifying OAG's statutory authority to enforce the HRA.

### **Conclusion**

Thank you for setting this hearing on this important bill and for the opportunity to testify. I am proud of the work OAG has done for District residents to fight discrimination. The provisions of the Attorney General Civil Rights Enforcement Clarification Amendment Act of 2021 will allow OAG to continue its vigorous enforcement of the District's anti-discrimination laws and build on the civil rights legacy that the Council has led on for decades. My colleagues and I are happy to answer any questions that you may have.